

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 90-588-G - ORDER NO. 96-103  
FEBRUARY 15, 1996

IN RE: South Carolina Pipeline Corporation - ) ORDER DENYING  
Maximum Rates for Industrial Customers ) PETITION FOR  
 ) REHEARING OR  
 ) RECONSIDERATION

This matter comes before the Public Service Commission of South Carolina (the Commission) on the January 24, 1996, Petition for Rehearing and Reconsideration filed by the South Carolina Energy Users Committee (SCEUC) in this docket. The Petition was filed in response to Order No. 95-1717 (December 12, 1995), Order Maintaining Present Level of Caps and Requiring Development of Monitoring Process. For the reasons discussed below, SCEUC's Petition for Rehearing and Reconsideration is denied.

I.

SCEUC contends that Order No. 95-1717 contains no findings or conclusions as required by S.C. Code Ann. §1-23-350 (1986). This statute requires that the Commission's findings of fact be sufficiently detailed to enable a reviewing court to determine whether the findings are supported by the evidence and whether the law has been properly applied to those findings; however, no particular format is prescribed. Able Communications, Inc. v. South Carolina Pub. Serv. Comm'n, 290 S.C. 409, 351 S.E.2d 151

(1986); Hamm v. American Tel. & Tel. Co., 302 S.C. 210, 394 S.E.2d 842 (1990). The findings contained in Order No. 95-1717 are sufficient to enable a reviewing court to make the required determinations, and are consistent with both statutory and case law. This allegation is therefore without merit.

II.

SCEUC next contends that Order No. 95-1717 erroneously concludes that the existing price caps are presumed to be valid and reasonable because Order No. 82-898, which initially instituted the caps, was reversed and remanded on appeal to the circuit court. SCEUC's contention is incorrect. Upon remand, the matter was settled by adoption of the caps established in Order No. 82-898.

III.

SCEUC contends that Order No. 95-1717 erroneously fails to consider, address, and adopt eight matters listed in the Petition. These matters are contrary to the evidence of record or otherwise constitute no basis for rehearing or reconsideration of Order No. 95-1717.

IV.

SCEUC contends Order No. 95-1717 unlawfully fails to follow Order 636 issued by the Federal Energy Regulatory Commission (FERC). FERC Order 636 does not apply to intrastate pipeline operations regulated by the Commission. This allegation is without merit.

V.

SCEUC contends that Order No. 95-1717 unlawfully shifts the burden of proof to customers of the utility by stating that no evidence was presented to dictate a reduction in the level of price caps. Order No. 95-1717 merely recognizes that the current cap levels which were previously established are presumed to be valid, correct, and reasonable, and that the burden is on the party seeking to modify those levels to show that such a modification is warranted. This holding accords with case law precedent and does not conflict with S.C. Code Ann. §58-5-240 (Supp. 1995) or S.C. Code Ann. §58-5-280 (1976).

VI.

SCEUC next contends Order No. 95-1717 erroneously states "that no real evidence" was presented at the hearing for a reduction in the level of the price caps. The intent of Order No. 95-1717 was to hold that there was no probative or substantial evidence supporting a reduction in the caps and to reject the testimony of SCEUC's witnesses Huhman and Phillips cited in the Petition. Moreover, even though these witnesses were not cross-examined, their testimony was refuted by other testimony and evidence of record. Finally, there is no requirement that a company witness present testimony on rates. These allegations are all without merit.

VII.

SCEUC contends Order No. 95-1717 erroneously relies on Staff's review of the study prepared by Pipeline's consultants because

Staff did not have sufficient time or information to fully review the study and because Staff's review was unknowingly based on compound errors contained in the study. The record does not support these allegations. To the contrary, the evidence reflects that Staff thoroughly reviewed the study, pointed out the deficiencies it thought existed, and made recommendations based upon its review. These allegations do not warrant rehearing or reconsideration of Order No. 95-1717.

VIII.

SCEUC contends Order No. 95-1717 erroneously states that "the caps do appear to be constraining the industrial customers on an aggregate basis." The word "not" was inadvertently omitted from the language quoted, as shown by the testimony of Staff witness Smith. Order No. 95-1717 is therefore amended to read: "We believe that the caps do not appear to be constraining the industrial customers on an aggregate basis." This reflects our true intent in that Order. SCEUC's Petition is otherwise denied on this ground.

IX.

SCEUC contends that the adoption of a monitoring process is erroneous in that the Staff proposal is not a process, that the information to be filed has always been available, and that developing a monitoring process affords no relief to SCEUC. These allegations are without merit and constitute no basis for rehearing or reconsideration. Additionally, the exhaustion of administrative remedies does not entitle SCEUC to any particular relief in this

matter.

X.

SCEUC also challenges the monitoring process for the reasons stated in its response to Staff's proposal. These do not constitute proper grounds for rehearing or reconsideration for the reasons stated in paragraph IX. above.

XI.

SCEUC alleges that the Commission is not empowered to determine whether or not competition is working. In Nucor Steel v. South Carolina Public Service Commission, \_\_\_ S.C. \_\_\_, 439 S.E.2d 270 (1994), the Supreme Court of South Carolina recognized the Commission's authority to use a negotiated rate structure for industrial customers that are subject to a competitive fuels market. Accordingly, contrary to SCEUC's assertion, the Commission does have the power to determine whether or not competition is working in setting rates.

XII.

SCEUC contends that Order No. 95-1717 erroneously follows previous Commission orders. As stated in paragraph IX. above, the exhaustion of administrative remedies does not entitle SCEUC to any particular relief, including having the Commission depart from its precedent. Additionally, the Commission unanimously reached its decisions in this case, and newly seated Commissioners were therefore not improperly denied the opportunity to hear any evidence. Finally, SCEUC has made no showing that its rights were prejudiced by the selective application of any Commission

precedent. SCEUC's allegations in this regard are without merit.

XIII.

SCEUC contends Order No. 95-1717 erroneously relies upon the study prepared for Pipeline as showing evidence of competition. For the reasons stated in paragraph XI. above, SCEUC's allegations regarding the issue of competition in this case are without merit. Moreover, substantial evidence supports the Commission's decision as to the presence of competition. These allegations are hereby rejected.

XIV.

SCEUC contends that Order No. 95-1717 erroneously fails to consider rate of return. The Commission previously disposed of this issue in Orders No. 94-1244 and 95-78 in this docket. Moreover, the Commission is not required to use any particular formula in determining rates, but it is the result reached and not the method employed which is controlling. Southern Bell Tel. & Tel. Co. v. Public Serv. Comm'n, 270 S.C. 590, 244 S.E.2d 278 (1978) (quoting Federal Power Comm'n v. Hope Natural Gas Co., 320 U.S. 591, 64 S. Ct. 281, 88 L.Ed. 333 (1944)). In Nucor Steel, supra, the South Carolina Supreme Court held that the cost-of-service formula is not the exclusive methodology for determining industrial rates. Accordingly, SCEUC's allegations are without merit.

XV.

SCEUC next contends that Order No. 95-1717 erroneously relies on Chart 2-7 from Pipeline's study. Order No. 95-1717 did not

specifically rely on Chart 2-7 but did base its decision upon information contained in the study along with other evidence presented. The evidence of record shows that the volumes in Chart 2-7 did not mathematically match those in Chart 2-10 because the latter exhibit included known industrial sales by South Carolina Electric and Gas Company (SCE&G), and were used merely to depict the seasonality imposed upon Pipeline through both its direct and indirect industrial sales. The question of whether SCE&G gas customers were paying costs was irrelevant to any issue in this proceeding and the inclusion of such information could not have affected the outcome. This contention is therefore rejected.

XVI.

SCEUC contends the Commission's rulings in this matter have unfairly and unduly limited SCEUC's rights and frustrated its attempts to exhaust administrative remedies. For the reasons discussed herein, the Commission's rulings have not improperly prejudiced SCEUC's rights, nor have they prevented SCEUC from seeking to exhaust its administrative remedies.

XVII.

SCEUC next contends that Order No. 95-1717 erroneously relies on Pipeline's study because it had no probative value and was not presented by a qualified witness. The qualification of a witness as an expert is within the Commission's discretion and, where the expert's testimony is based upon facts sufficient to form the basis for an opinion, it is for the Commission to determine its probative value. Berkeley Elec. Coop. v. South Carolina Pub. Serv. Comm'n,

304 S.C. 15, 402 S.E.2d 674 (1991). The Commission's decision to accept the study and testimony by Pipeline's expert witnesses is supported by evidence of their qualifications as experts in the fields of economics and regulated industries, including gas utilities. The probative value of their testimony and the underlying study are, to the extent they are accepted by Order No. 95-1717, also supported by substantial evidence. SCEUC's allegations in this regard are therefore without merit.

XVIII.

SCEUC next contends that Order No. 95-1717 erroneously relies on Order No. 94-478, because Order No. 94-478 was issued ex parte, and to the prejudice of SCEUC. These allegations were previously disposed of in Commission Orders No. 94-1244 and 95-78. Order No. 94-78 merely recognized and gave effect to the fact that the purpose of the stay previously granted by the Commission had been served. SCEUC was not prejudiced by this order in that it allowed this matter to go forward, so that SCEUC could continue to exhaust its administrative remedies.

XIX.

SCEUC contends Order No. 95-1717 erroneously relies on Order No. 94-1244 because Commissioners seated since 1990 are precluded from considering SCEUC's case. For the reasons stated in paragraph XII. above, newly seated Commissioners were not improperly denied the opportunity to consider any evidence including SCEUC's.



XX.

SCEUC contends that Order No. 95-1717 erroneously relies on the decision of May 22, 1995, granting Pipeline a continuance of the hearing date. Order No. 95-1717 relies on no such decision. The Commission did grant Pipeline's request to continue a hearing scheduled for May 22, 1995, with the consent of SCEUC, due to the pendency of a petition for writ of certiorari that SCEUC had filed in the original jurisdiction of the South Carolina Supreme Court. None of SCEUC's allegations regarding the continuance afford any basis for rehearing or reconsidering Order No. 95-1717.

XXI.

SCEUC contends Order No. 95-1717 erroneously relies on other Commission orders and rulings denying relief requested by SCEUC in its Motion for Rate Sanctions, Motion to Refile Evidence, Motion for Order Compelling Discovery Responses, and in its motions and objections during the hearing. As noted in paragraph XX. above, the continuance in this matter was properly granted. Moreover, Order No. 95-1717 finds that Pipeline would not be allowed to seek an increase in the caps in this case and that even if the Company had been allowed to seek an increase, the evidence did not warrant it. Finally, from the time that the issues to be determined were clearly set forth, SCEUC had ample opportunity to conduct discovery and prepare its case. All of these allegations of error are without merit.

XXII.

SCEUC contends that the failure to circulate a proposed order in this matter was error because the hearing transcript was unavailable prior to the Commission's decision. Contrary to SCEUC's assertion, Pipeline was not provided access to official hearing transcripts for use in submitting its brief. Rather, Pipeline was merely allowed to make copies of the backup tapes of the hearing. Nothing prevented SCEUC from gaining access to the backup hearing tapes for use in preparing a post-trial brief, and nothing in S.C. Code Ann. §58-5-310 (1976) requires that official hearing transcripts be made available prior to the Commission reaching a decision. These allegations are without merit.

XXIII.

SCEUC contends that Order No. 95-1717 and the proceedings in this matter violate the due process rights of SCEUC and its members. For the reasons discussed herein, SCEUC was not denied a fair hearing in this matter, and the Commission properly determined from the evidence of record that the industrial cap levels were not excessive. SCEUC therefore has not shown a denial of due process. See Palmetto Alliance, Inc. v. South Carolina Pub. Serv. Comm'n, 282 S.C. 430, 319 S.E.2d 695 (1984).

XXIV.

SCEUC next contends that Order No. 95-1717 violates its equal protection rights and those of its members. The petition fails to show the order resulted in different treatment for similarly situated parties. See GTE Sprint Communications Corp. v. Public

Serv. Comm'n, 288 S.C. 174, 341 S.E.2d 126 (1986). Accordingly SCEUC's equal protection argument is without merit, and is rejected.

XXV.

SCEUC contends that Order No. 95-1717 violates the Commerce Clause of the United States Constitution. The critical inquiry under this provision is whether the practical effect of a state regulation is to control conduct beyond the boundaries of the state. United Technologies v. South Carolina Second Injury Fund, \_\_\_ S.C. \_\_\_, 456 S.E.2d 901 (1995). SCEUC's Petition does not show or even allege that Order No. 95-1717 has this effect. Accordingly, this argument is without merit.

XXVI.

SCEUC contends Order No. 95-1717 violates the Commerce Clause by its "constraining" industrial customers. As discussed in paragraph VIII. above, Order No. 95-1717 is amended to state that "the caps do not appear to be constraining the industrial customers on an aggregate basis." Accordingly, SCEUC's argument is without merit.

XXVII.

Finally, SCEUC contends that Order No. 95-1717 violates its rights and those of its members under the Contract Clause of the United States Constitution and the South Carolina Constitution. The Commission's exercise of state police powers in regulating rates and services of a public utility does not unconstitutionally impair the customers' right to contract. Anchor Point, Inc. v.

Shoals Sewer Co., 308 S.C. 422, 418 S.E.2d 546 (1992). This contention is therefore without merit.

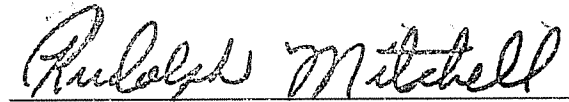
IT IS THEREFORE ORDERED AS FOLLOWS:

1. The third sentence of the first full paragraph on page 13 of Order No. 95-1717 is amended to read: "We believe that the caps do not appear to be constraining the industrial customers on an aggregate basis."

2. The Petition for Rehearing and Reconsideration of Order No. 95-1717 filed by the South Carolina Energy Users Committee is hereby denied.

3. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

  
Chairman

ATTEST:

  
Deputy Executive Director  
(SEAL)